

SB 1677 - 1994

An act to add Sections 5231.5, 9241.5, and 24001.6 to, and to repeal Sections 5047.5, 5239, and 9247 of, the Corporations Code, relating to liability.

SEC. 1. The Legislature finds and declares that the services of directors and officers of nonprofit public benefit and religious organizations are critical to the efficient conduct and management of the public service and charitable affairs of the people of California. The willingness of individuals to offer their services to those organizations has been deterred by a perception that their personal assets are at risk for these activities. This perception is fostered by the failure of existing law to present a uniform scheme of liability protection applicable to all public benefit and religious organizations. It is the public policy of this state to provide incentive and protections to the individuals who perform these important functions on behalf of charities, religious organizations and other organizations with a public purpose.

SEC. 2. Section 5047.5 of the Corporations Code is repealed.

SEC. 3. Section 5231.5 is added to the Corporations Code to read:

5231.5. (a) Except as provided in this subdivision, no person shall bring an action against a volunteer director or officer of a nonprofit corporation which is subject to this part or to similar laws of any other state, and which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code, based on violation of the duties set forth in section 5231, 5233 or 5237, or based on any other act or omission by a person arising out of, or reasonably believed to be in the course of his or her capacity as a director or officer of a nonprofit corporation. This subdivision shall not apply to actions brought by:

- (1) The corporation, or a member pursuant to Section 5710.
- (2) A director of the corporation.
- (3) An officer of the corporation.
- (4) The Attorney General or any person granted relator status by the Attorney General.
- (5) Any governmental agency pursuant to any other provision of law.

(b) Notwithstanding subdivision (a), if a person not listed in subdivision (a) has a claim against a director or officer of the corporation but does not also have a similar claim against the corporation, arising out of the transaction or occurrence that is the subject matter of the claim against the director or officer, then that person may bring an action on the claim against the director or officer.

(c) This section is not intended to protect an individual from liability for his or her acts taken outside the course and scope of his or her duties as an officer or director of a nonprofit public benefit corporation.

(d) In order to ensure a source of recovery for the claims against the corporation pursuant to subdivision (a), subdivision (a) shall apply only if the corporation maintains a general liability insurance policy ~~or is self-insured~~ so that it has available coverage ~~or assets~~ in at least the following amounts:

- (1) If the corporation's annual budget is less than fifty thousand dollars (\$50,000), the minimum required amount shall be five hundred thousand dollars (\$500,000).

(2) If the corporation's annual budget equals or exceeds fifty thousand dollars (\$50,000), the minimum required amount shall be one million dollars (\$1,000,000).

Insurance acquired pursuant to subdivision (b) of Section 5005.1 shall satisfy this requirement.

(e) Nothing in this section shall be deemed to excuse an insurer from its obligations to a corporation by reason of the release of liability of a director or officer pursuant to subdivision (a).

(f) "Volunteer" means the rendering of services without compensation. "Compensation" means remuneration whether by way of salary, fee, or other consideration for services rendered as a director or as an officer. However, the payment of per diem, mileage, or reimbursement of expenses to a director or officer, or compensation for services other than as an officer or director, does not affect that person's status as a volunteer within the meaning of this section.

(g) This section shall apply only to causes of action arising on or after January 1, 1994. The enactment of this section shall not be considered in determining any person's liability for a cause of action which arose prior to January 1, 1994, nor shall the repeal of Sections 5239 and 5047.5, ~~and Section 425.15 of the Code of Civil Procedure~~ be taken into account in determining any person's liability for a cause of action which arose at any time.

SEC. 4. Section 5239 of the Corporations Code is repealed.

SEC. 5. Section 9241.5 is added to the Corporations Code to read:

9241.5. (a) Except as provided in this subdivision no person shall bring an action against a volunteer director or officer of a nonprofit corporation which is subject to this part or to similar laws of any other state, and which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code, based on violation of the duties set forth in section 9241, 9243, or 9245, or based on any other act or omission by a person arising out of, or reasonably believed to be in the course of his or her capacity as a director or officer of a nonprofit corporation. This subdivision shall not apply to actions brought by:

- (1) The corporation.
- (2) A director of the corporation.
- (3) An officer of the corporation.
- (4) Unless otherwise provided in the articles or bylaws, a religious authority, including, but not limited to a minister, priest or rabbi, of the corporation, the general church of which the corporation is a member, or in the case of a subordinate corporation, a superior religious body.
- (5) The Attorney General to the extent permitted by Section 9230.
- (6) Any governmental agency pursuant to any other provision of law.

(b) Notwithstanding subdivision (a), if a person not listed in subdivision (a) otherwise has a claim against a director or officer of the corporation, but does not also have a similar claim against the corporation arising out of the transaction or occurrence that is the subject matter of the claim against the director or officer, then that person may bring an action against the director or officer.

(c) This section is not intended to protect an individual from liability for his or her acts taken outside the course and scope of his or her duties as an officer or director of a nonprofit religious corporation.

(d) In order to ensure a source of recovery for the claims against the corporation pursuant to subdivision (a), subdivision (a) shall apply only if the corporation maintains a general liability insurance policy ~~or is self-insured~~ so that it has available coverage ~~or assets~~ in at least the following amounts:

(1) If the corporation's annual budget is less than fifty thousand dollars (\$50,000), the minimum required amount shall be five hundred thousand dollars (\$500,000).

(2) If the corporation's annual budget equals or exceeds fifty thousand dollars (\$50,000), the minimum required amount shall be one million dollars (\$1,000,000).

Insurance acquired pursuant to subdivision (b) of Section 5005.1 shall satisfy this requirement.

(e) Nothing in this section shall be deemed to excuse an insurer from its obligations to a corporation by reason of the release of liability of a director or officer pursuant to subdivision (a).

(f) "Volunteer" means the rendering of services without compensation. "Compensation" means remuneration whether by way of salary, fee, or other consideration for services rendered as a director or as an officer. However, the payment of per diem, mileage, or reimbursement of expenses to a director or officer, or compensation for services other than as an officer or director, does not affect that person's status as a volunteer within the meaning of this section.

(g) This section shall apply only to causes of action arising on or after January 1, 1994. The enactment of this section shall not be considered in determining any person's liability for a cause of action which arose prior to January 1, 1994, nor shall the repeal of Sections 5047.5 and 9247, ~~and Section 425.15 of the Code of Civil Procedure~~ be taken into account in determining any person's liability for a cause of action which arose at any time.

SEC. 6. Section 9247 of the Corporations Code is repealed.

SEC. 7. Section 24001.6 is added to the Corporations Code to read:

24001.6. (a) Except as provided in this subdivision, no person shall bring an action against a volunteer director or officer of a nonprofit association, as which is defined in Section 21000, and which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code, based on a violation of the duties of that person or based on any other act or omission by the officer or director, if the violation of the duties or other act or omission occurred while the director or officer was acting in, or reasonably believed he or she was acting in his or her capacity as a director or officer of the nonprofit association, and occurred in the exercise of his or her policymaking judgment. This subdivision shall not apply to actions brought by:

- (1) The association, or a member pursuant to a members' derivative action.
- (2) A director of the association.
- (3) An officer of the association.
- (4) The Attorney General or any person granted relator status by the Attorney General.

(5) If the nonprofit association is a religious association, and unless otherwise provided in the articles or bylaws, a religious authority, including, but not limited to a minister, priest or rabbi, of the association, the general church of which the association is a member, or in the case of a subordinate association, a superior religious body.

(6) Any governmental agency pursuant to any other provision of law.

(b) Notwithstanding subdivision (a), if a person not listed in subdivision (a) otherwise has a claim against a director or officer of the association but does not also have a similar claim against the association arising out of the transaction or occurrence that is the subject matter of the claim against the director or officer, then that person may bring an action on the claim against the director or officer.

(c) This section is not intended to protect an individual from liability for his or her acts taken outside the course and scope of his or her duties as an officer or director of a nonprofit association.

(d) In order to ensure a source of recovery for the claims against the association pursuant to subdivision (a), subdivision (a) shall apply only if the association maintains a general liability insurance policy ~~or is self-insured~~ so that it has available coverage ~~or assets~~ in at least the following amounts:

(1) If the association's annual budget is less than fifty thousand dollars (\$50,000), the minimum required amount shall be five hundred thousand dollars (\$500,000).

(2) If the association's annual budget equals or exceeds fifty thousand dollars (\$50,000), the minimum required amount shall be one million dollars (\$1,000,000).

Insurance acquired pursuant to subdivision (b) of Section 5005.1 shall satisfy this requirement.

(e) Nothing in this section shall be deemed to excuse an insurer from its obligations to an association by reason of the release of liability of a director or officer pursuant to subdivision (b).

(f) "Volunteer" means the rendering of services without compensation.

"Compensation" means remuneration whether by way of salary, fee, or other consideration for services rendered as a director or as an officer. However, the payment of per diem, mileage, or reimbursement of expenses to a director or officer, or compensation for services other than as an officer or director, does not affect that person's status as a volunteer within the meaning of this section.

(g) This section shall apply only to causes of action arising on or after January 1, 1994. The enactment of this section shall not be taken into account in determining a person's liability for a cause of action which arose prior to January 1, 1994.